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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 457

PAN-AMERICAN LIFE INSURANCE COMPANY,

Petitioner,

v.

ABRAHAM RAIJ,

Respondent.

Petition for a Writ of Certiorari to The Supreme Court of Florida

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Pan-American Life Insurance Company respectfully prays that a writ of certiorari issue to review the judgment of The Supreme Court of Florida, entered herein on April 22, 1964, with rehearing denied June 10, 1964, which affirmed a judgment entered in the Circuit Court of Dade County, Florida, in favor of the respondent herein.

OPINIONS BELOW

The opinion of the Circuit Court of Dade County, Florida, is reported in 19 Fla. Supp. 162.

The opinion of the Florida District Court of Appeal,

Third District, is reported in 156 So. 2d, 785. This opinion affirms, per curiam, the judgment of the Circuit Court of Dade County, on the authority of an opinion of the said District Court of Appeal, in another companion case, Pan-American Life Insurance Company, Appellant v. Recio, which is reported in 154 So. 2d 197.

The Respondent herein filed in The Supreme Court of Florida a petition for a writ of certiorari from that court to the said District Court of Appeal. This petition was granted by an order dated March 25, 1964, then denied by an order dated April 22, 1964. Both orders are reported in 164 So. 2d 204. The order denying the petition for re-hearing on June 10, 1964 is not yet reported.

JURISDICTION

The date of the judgment sought to be reviewed and the time of its entry is June 6, 1962 and September 20, 1962, with petition for re-hearing denied October 18, 1962. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257, (3). No extension of time to petition for certiorari has been sought.

QUESTIONS PRESENTED FOR REVIEW

Two questions are presented by this record. They are:

1. May the Courts of this country hold invalid a law promulgated by a recognized foreign sovereign (the Republic of Cuba) which restricted the rights of its nationals to whom money is owed to receipt of payment

only in Cuba and only in Cuba pesos, without a special permit from the National Bank of Cuba?

2. May the Courts of this country hold invalid a law (and an implementing executive resolution) of a recognized foreign sovereign, which expropriated the Cuban assets of an American life insurance company doing business there, and substituted the Cuban State as the obligor on outstanding insurance policies, at least in so far as the rights of Cuban nationals are concerned?

THE STATUTES AND DECREES INVOLVED

The Statutes, Executive Agreement and Decrees involved are:

(1) Cuban Law No. 568 of September 29, 1959. The pertinent test thereof is set forth in the Appendix hereto, page 1.

(2) Cuban Law No. 851 of July 6, 1960, and Resolution No. 3 of October 24, 1960, promulgated in pursuance of Law No. 851. The pertinent test thereof is set forth in the Appendix hereto, pages 5 and 7.

STATEMENT OF THE CASE

This action was filed in the Circuit Court of Dade County, Florida, by Abraham Raij as the insured in a policy of insurance issued by Pan-American Life Insurance Company in Cuba in 1942.

The policy was originally payable in dollars.

On January 1, 1959, the government of which Fidel Castro was and is Premier came into power. A few days later, the United States extended diplomatic recognition to that Government, which has continued to this day.

LAW NO. 568

On September 29, 1959, the Republic of Cuba adopted Law No. 568, mentioned above. The text, in Spanish and English, was introduced in evidence in the trial court. An experienced Cuban lawyer, testified that under this law it was a felony for any Cuban national to make or receive payment of a debt thereafter becoming payable anywhere except in Cuba, or in any currency except Cuban pesos, without a special permit from the National Bank of Cuba. This law also made it a felony for a Cuban national to have credits set up for him in a foreign nation, without the specified permit.

The plaintiff is and was at all times a national of Cuba and did not have the required permit.

These facts raised the first of the questions presented stated above. This question was first raised in the trial court in the answer filed by the defendant. During the trial, it was raised by the offer into evidence of the texts of Law No. 568 and the testimony of a Cuban Lawyer. It was also raised by the defendant's motion for new trial, by assignment of error on appeal, and in briefs and argument in the District Court of Appeal. The testimony of the Cuban lawyer was disregarded, though uncontradicted. The petition for rehearing was denied. The assignments of error were not upheld.

The effect of the holding of the trial court in this case, and of the District Court of Appeal in this and the Recio case, is to hold Law No. 568 invalid and of no effect upon the rights of Cuban nationals, and deprives the American company of a defense properly available to it under Cuban law.

It is believed that this is, in effect, a decision denying the application of the Act of State doctrine, in circumstances in which this Court for many years has held it applicable.

LAW NO. 851 AND RESOLUTION NO. 3

Law No. 851 was promulgated on July 6, 1960. It shows on its face that it was in retaliation against the reduction of the Cuban sugar quota by the United States. It is the same law involved in the case of Banco Nacional de Cuba v. Sabbatino, et al, 11 L. Ed. 2d 804.

Law No. 851 authorized the issuance of subsequent resolutions of intervention and expropriation against United States concerns and Cuban concerns subject to American control. Resolution No. 1 under this law is involved in the Sabbatino case. The present case involves Resolution No. 3 thereunder.

Resolution No. 3 was promulgated on October 24, 1960. It starts off with a long recital of the reasons for its issuance. Section 1 then proceeds to decree the intervention and expropriation of a long list of businesses, broken down into groups according to the nature of their business. In group XX are listed numerous insurance companies, including Pan-American Life Insurance Com-

pany. The concerns in this group were assigned for administrative purposes to the Social Security Bank, which was authorized to appoint an administrator. Two days later, the administrator so appointed appeared at the Havana branch office of Pan-American and at gun-point took possession of the office, its records and the key to the safe deposit box in which its securities and reserves against its Cuban liabilities were kept.

Resolution No. 3 went further than expropriation. In Section 2, it provided, among other things, that the Cuban State was substituted as obligor upon the outstanding liabilities of the expropriated concerns. The plaintiff's claim to benefits under the policy herein involved was among these liabilities.

In the trial court, the defendant offered the testimony of the Cuban Lawyer who stated that the effect of this law and resolution was to terminate the liability of Pan-American to the plaintiff and to confine the plaintiff, a Cuban national, to his rights against the Republic of Cuba under Section 2. His testimony was uncontradicted.

The trial court, as stated above, rejected the defendant's contentions based on Law No. 851 and Resolution No. 3. The effect of the holding was that the law and resolution were ineffectual to accomplish the result expressed in Section 2 and confirmed by the testimony of the Cuban lawyer. The holding deprived the defendant of a defense afforded it under Cuban law.

This question was raised in the answer, by the introduction of the Spanish and English texts of the legisla-

tion, by the testimony of the Cuban lawyer, by the motion for new trial and by assignment of error on appeal. The record reference for the legislative text is page 10. All other references are the same as for Law No. 568.

It is believed that this is a decision denying the application of the Act of State doctrine in circumstances in which this Court has for many years held the doctrine applicable. As such, it is a decision of a Federal question of substance in a way probably not in accord with applicable decisions of this Court.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT AND BRIEF ARGUMENT IN SUPPORT THEREOF

1. This case is equally as important in the field of international relations as the Sabbatino case. This case represents the other side of the coin under examination in Sabbatino. This case involves the effect of Cuban expropriation of American companies and their outstanding liabilities to Cuban nationals in the United States.

Sabbatino involved the application of the Act of State doctrine to the territorial sovereignty of Cuba. This case involves the application of the Act of State doctrine to the personal sovereignty of Cuba over its nationals.

Pan-American Life alone had outstanding more than 6000 policies issued through its Havana branch. It is impossible to know how many of these policy-holders or beneficiaries are among the hundreds of thousands of Cubans now resident in the United States. It is known that there are many of these policies presently in litiga-

tion, and more to come. There are about twenty such suits pending the State and Federal courts in Miami alone. Others have been filed in Jacksonville, New Orleans, Galveston, Shreveport, Raleigh, Newark, and San Juan, Puerto Rico.

One lawyer in Miami says he has two hundred more ready to be filed and one other American company is informed that several hundred more are available for filing in the New York city area alone. One Cuban lawyer is known to have run advertisements in Spanish-language papers in San Juan and Miami offering his services in the collection of policy benefits.

The pending suits involve all kinds of policy claims—death benefits, cash surrender values, annuities, endowments, as well as declarations that the companies must accept premiums to keep policies in force and pay benefits upon future demand. Some cases are in State Courts, others in the Federal courts.

All of these cases basically are to be decided upon questions of Federal law. The decision of these Federal questions should be uniform throughout the country and free from the vagaries of decisions by courts of differing judicial systems. The only way such uniformity can be achieved is by a decision of this court. If it is adverse to the companies, they will undoubtedly pay their debts. If it is favorable to the companies, the decision of this court will put an end to the impending flood of litigation. In either event, there will be an enormous saving of money, legal manpower and judicial labor.

2. The effect of the decision in this case is in con-

flict with numerous decisions of this Court applying the Act of State doctrine to the acts of a foreign sovereign then or later recognized diplomatically by this country. These are Oetjen v. Central Leather Co., 246 U.S. 297; Underhill v. Hernandez, 168 U.S. 250; American Banana Co. v. United Fruit Co., 213 U.S. 347; Shapleigh v. Mier, 299 U.S. 268; U. S. v. Belmont, 301 U.S. 324; U. S. v. Pink, 315 U.S. 203, and most recently, Banco Nacional de Cuba v. Sabbatino.

Sabbatino clearly held that the application of the Act of State doctrine is a Federal question. The state court in this case has decided the question in a way almost certainly not in accord with the decisions of this cause.

CONCLUSIONS

It is respectfully submitted that this petition for a writ of certiorari be granted.

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